IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.79 OF 2003

Mrs. Ivy C. Da Conceicao,
r/o H.No.1041, Allem-Waddo,
Chinchinim, Salcete,Goa ... PETITIONER

VERSUS

1. State of Goa, through its Chief Secretary, having office at Secretariat, Panaji, Goa;

2. The Director, Directorate of Education, Government of Goa, St. Inez, Panaji, Goa;

3. Diocesan Society, a duly registered Society under the Societies Registration Act, 1860, through its Secretary, having office at Bishop's Palace, Altinho, Panaji, Goa;

4. Shri Elvis Gonsalves, Grade-I teacher/Principal, St.. Teresa Higher Secondary School, Candolim, Bardez, Goa;

5. St. Teresa Higher Secondary School, through its Principal, Candolim, Bardez, Goa;

6. Smt. Maria L.S. Valawaikar, Grade-I Teacher/Principal, St. Cruz Higher Secondary School, St. Cruz, Goa;

7. St. Cruz Higher Secondary School, through its Principal, St. Cruz, Goa;

8. Shri Adelpo Afonso, Acting Principal, Rosary Higher Secondary

School, Navelim, Goa;

9.Rosary Higher Secondary School, through its Principal, Navelim, Goa

Mr. Nitin Sardessai, Advocate for the Petitioner.

Mr. A.N.S. Nadkarni, Advocate General, with Mrs P.A. Kamat, Addl. Govt. Advocate, for Respondents Nos.1 and 2.

Mr. J.E. Coelho Pereira, Sr. Advocate, with Mr. V. Korgaonkar, Advocate,for Respondents Nos. 3, 5, 7 and 9.

Mr. J. Godinho, Advocate for Respondents Nos. 4 and 6.

Mr. M.P. Almeida, Advocate for Respondent No.8.

CORAM : F.I. REBELLO &
P.V. HARDAS,JJ.

DATED : JUNE 9, 2003.

ORAL ORDER (PER **F.I. REBELLO,J.)**

Heard learned Counsel for the parties.

2. The Petitioner aggrieved by her non-selection to the post of Headmaster/Headmistress in Schools run by the third Respondent Society, has impugned the appointments of Respondents Nos. 4 and 6 as also Respondent No.8. An additional Affidavit had been filed by the Secretary of Respondent No.3 insofar as appointment of Respondent No.8 is concerned. In paragraph 2 it is set out that on the advice of the Respondent NO.3 they have decided to

withdraw the selection of Respondent No.8 and to carry out a fresh selection to the post of Principal in Respondent No.9 School and consider the case of the Petitioner along with the other eligible candidates through a duly constituted Promotion Committee. Respondent No.8 is represented before this Court.

3. On behalf of the Petitioners, the learned Counsel contends that on a consideration of the Minutes of the Departmental Promotion Committee it would be clear that the Committee proceeded on the footing that these are appointments and therefore it is not possible to know whether these are by direct recruitment or by promotion. It is next contended that the perusal of the Minutes would not indicate as to what was the criteria that were really considered. It is further contended that the test applied seems to be distinct and different in case of Respondents Nos. 4 and 6. In these circumstances, it is contended that this Court should interfere with the said appointments.

4. On the consideration of the Departmental Promotion Committee it is clear that the appointment of Respondents Nos. 4 and 6 is by promotion, as admittedly, it is the D.P.C. which

was constituted in terms of the Rules and which selected Respondents Nos. 4 and 8. The appointment was not done pursuant to any advertisement by way of direct recruitment. The word 'appointment' therefore will mean by the method of 'promotion'. Even otherwise, the word 'appointment' can include both appointment and direct recruitment. In the instant case, it is by promotion.

5. We find that there is an unanimous decision of the Selection Committee. The tests considered are set out in the Minutes of the Committee. Insofar as the Respondent No.4 is concerned, the minutes disclose that in the overall merit she has been given preference because of her exceptional qualities of leadership, organizational abilities and teaching capabilities. In the Affidavit filed, in the matter of qualifications Respondent No.4 is shown to possess M.Com., B.Ed., and M.Ed.degrees. Her qualifications clearly are higher than those of the Petitioner. Insofar as the Respondent No.6 is concerned, the consideration for selection have been that besides being an efficient teacher and a good leader, has also acquired higher qualifications i.e. M.Ed. and M.Phil.. Considering the above factors in our opinion it is really not possible to say that the Committee did

not apply the same standards insofar as the other candidates are concerned. At page 26, of the paper-book are the names of candidates who were considered. Seniority would have prevailed if the candidates otherwise were of equal merit. In this case, Respondents Nos. 4 and 6, though junior to the Petitioner, have been found to be better qualified and in other aspects by the Departmental Promotion Committee. In these circumstances, we do not find any case for interference.

6. The additional Affidavit filed on behalf of Respondent no.3 is accepted. Respondent No.3 is directed in terms of the Affidavit filed before the Court to consider the case of the Petitioner along with other eligible candidates by way of promotion to the vacant post available within thirty days from today.

With the above observations, the Petition is disposed of with no order as to costs.

F.I. REBELLO,J.

P.V. HARDAS,J.